

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 10/08/03 Item: 4.e.

File Number
Appeal of the Planning Director's Decision to Frant
RA 02-006

Application Type
Reasonable Accommodation

Council District
2

Planning Area
Edenvale

Assessor's Parcel Number(s)
704-41-028

STAFF REPORT

PROJECT DESCRIPTION:

Completed by: **Jeff Roche**

Location: Northerly side of Arbor Valley Court, approximately 130 feet easterly of Muscat Drive (215 Arbor Valley Court)

Gross Acreage: 0.15

Net Acreage: 0.15

Net Density: N/A

Existing Zoning: R-1-8 Single-Family
Residence District

Existing Use: Sober Living Environment for up to (11) residents

Proposed Zoning: No Change

Proposed Use: Sober Living Environment for up to (12) residents

GENERAL PLAN

Completed by: **JR**

Land Use/Transportation Diagram Designation
Medium Low Density Residential (8.0 DU/AC)

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: **JR**

North: Single-Family Detached Residential

R-1-8 Single-Family Residence District

East: Single-Family Detached Residential

R-1-8 Single-Family Residence District

South: Single-Family Detached Residential

R-1-8 Single-Family Residence District

West: Single-Family Detached Residential

R-1-8 Single-Family Residence District

Completed by: **JR**

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: **JR**

Annexation Title: Oak Grove No. 18

Date: March 23, 1966

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☐ Approval with Conditions
☒ Uphold Director's Decision

Date: _____

Approved by: _____
☒ Action
☐ Recommendation

APPLICANT/DEVELOPER
Andy Lujan and Robert Norton
Support Systems Homes, Inc.
1 West Campbell Avenue, #E 45
Campbell, CA 95008

OWNER
Andy Lujan and Robert Norton
Support Systems Homes, Inc.
1 West Campbell Avenue, #E 45
Campbell, CA 95008

CONTACT
Kevin Richardson
Support Systems Homes, Inc.
1 West Campbell Avenue, #E 45
Campbell, CA 95008

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Jeff Roche

Department of Public Works

No comments.

Other Departments and Agencies

See attached memorandums from City of San Jose, Fire and Police Departments.

GENERAL CORRESPONDENCE

Copy of Appeal, Letter from Applicant's Attorney in Response to Appeal and all other prior correspondence.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

This is an appeal of the Director's decision to grant a Request for Reasonable Accommodation from Title 20 Section 20.24.020 of the San Jose Municipal Code to allow the use of a single-family house for up to 12 residents including 2 resident staff as a Sober Living Environment for a residence in recovery from alcoholism addiction and chemical dependency. Title 20 limits permitted uses in the subject R-1-8 Residence Zoning District to single-family residential uses and to residential care or service facilities for six or fewer persons with one or two resident staff as provided under state law.

The subject site was the subject of a prior request for Reasonable Accommodation (File No. RA 98-05-001). That request was granted by the Planning Commission on appeal for a total of eleven (11) residents, including up to nine adult residents and two resident staff members.

The subject 0.15-gross-acre site at 215 Arbor Valley Court is located in a single-family detached residential neighborhood. The facility, built as a single-family residence in the late 1960's (ca 1969), is a two-story, approximately 1,860 square-foot structure containing four bedrooms, two and a half bathrooms, a living room, a family room, a kitchen, and a dining room. The site is surrounded by single-family detached residential uses on all sides. The subject site is currently being used as a Sober Living Environment and is certified by the County of Santa Clara District Attorney's Office for up to eleven residents (consisting of up to nine adult residents and two resident staff members).

On January 17, 2003, the Director of Planning issued a "Proposed Determination for Reasonable Accommodation" for a total of 12 residents, (10 residents and 2 two resident staff) provided that no more than 5 residents would be licensed drivers (including staff) with vehicles at the site. On January 21, 2003, a resident of the neighborhood surrounding the project site requested a public hearing on the Request for Reasonable Accommodation.

The public hearing, originally scheduled to be heard on February 26, 2003 was deferred to March 12, 2003 to allow the applicant to complete the project plans. The hearing was opened on March 12 and continued to April 30, 2003 to allow the applicant to have plans drawn to scale and to meet with the neighborhood. The applicant scheduled a community meeting/open house for the facility on April 3, 2003, from 6:00 to 7:00 p.m. One neighbor attended the open house.

The Director of Planning received additional public comment at the April 30, 2003, Director's Hearing.

Several area residents spoke in opposition to the request, expressing concern regarding overcrowding of individuals within the household, lack of facilities and open space, the lack of adequate parking, neighborhood safety, neighborhood 'incidents' caused by the residents at the subject site, and the erosion of quality of life. Jeffrey Janoff, the applicant's attorney, responded to neighborhood comments and concerns and answered questions posed by the Hearing Officer.

On May 2, 2003, the Director of Planning issued a Final Director's Decision granting Reasonable Accommodation to allow a total of (12) residents, including (2) resident staff. This determination was based in part on the applicant's proposal to limit the number of licensed drivers to 5.

An Appeal of the Director's Final Decision was filed by Reza Sadat, et al, on May 28, 2003. A copy of the appeal letter, a letter from the applicant's attorney in response to the appeal and all other prior correspondence is attached to this report. The stated grounds for the appeal are inadequate parking, inadequate facilities and space within the house for the residents, and the potential for increased crime and other problems in the neighborhood.

ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from further environmental review pursuant to the California Environmental Quality Act since the proposal involves only a minor expansion of an existing facility or use.

GENERAL PLAN CONFORMANCE

The proposed request for Reasonable Accommodation for a clean and sober living environment is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8.0 DU/AC) in that no expansion of the existing structure or increase in the number of dwelling units is proposed, the proposal is consistent with the requirements of the Housing and Building Codes, and the facility will operate as single-housekeeping unit.

ANALYSIS

Unlike many decisions made by the City affecting the use of private property, the granting of Requests for Reasonable Accommodation is not equivalent to a discretionary land use permit. Several State and Federal laws that limit the discretionary powers of local municipalities with regard to reasonable accommodations from land use requirements in order to make housing opportunities available to disabled persons. The analysis section of this report provides an overview of the regulations and relevant City ordinances and policies that provide the basis for decisions on these matters. Copies of memoranda from the City Attorney to the City Council related to this issue dated November 2, 2001, and April 30, 2002 are attached as background.

Overview of Laws Pertaining to Requests for Reasonable Accommodation

Federal Fair Housing Act. The Federal Fair Housing Act Amendments, adopted in 1988, prohibit housing discrimination based upon disabilities or handicaps. Recovering drug addicts and alcoholics are specifically included in the definition of "handicapped" under this law. Most residents of

Residential Care Facilities and Residential Service Facilities fall within the protection of these laws. These laws drastically limit the ability of cities to use their discretionary land use authority to regulate group living arrangements involving disabled persons. Both federal and state laws expressly make it unlawful to discriminate through public or private land use practices, decisions, and authorizations. Discrimination includes restrictive covenants, zoning laws, denials of use permits, and other actions that make housing opportunities unavailable. Under the Federal Fair Housing Act, local governments are required to make "reasonable accommodation" to the needs of persons with disabilities in the application of its policies, procedures and regulations.

Proposition 36. Proposition 36, also known as "The Substance Abuse and Crime Prevention Act", was passed by 61% of California voters on November 7, 2000 and became effective on July 1, 2001.

The intent of this initiative is to divert first- and second-time non-violent defendants, probationary and paroled individuals charged with simple drug possession or drug use offenses from incarceration by requiring residency in community-based substance abuse treatment programs. The passing of this initiative has created the need for additional sober living environments (SLEs) on a statewide basis and has likely increased the number of Requests for Reasonable Accommodation in San Jose.

Group Home Ordinance. In 1998, the City Council adopted the "Group Home Ordinance" in order to bring the San Jose Municipal Code into compliance with federal and state legislation, which requires that local zoning regulations not discriminate against persons with disabilities. Section 20.160.010 of the Zoning Code states that it is the policy of the City of San Jose to provide reasonable accommodation for persons with disabilities seeking fair access to housing in the application of its zoning laws, policies, and process. The principle of reasonable accommodation is an explicit requirement of the Federal Fair Housing Act.

The Zoning Code establishes the procedures for making a determination about the reasonableness of a requested accommodation and identifies the specific factors that must be considered prior to granting an accommodation.

Santa Clara County Alcohol & Drug Residential Facilities Certification. As a result of the passage of Proposition 36, facilities such as that requested in the current application are required to obtain approval from the District Attorney's (DA) Office under the Santa Clara County Alcohol & Drug Residential Facilities Certification Program. Under County certification, the DA's Office is responsible to monitor operation of the facility in order to assure compliance with applicable laws. The applicants have indicated that they have applied to modify the current facility certification, which was originally issued by the District Attorney's Office for 9 clients and 2 staff. The change to the certification to allow 10 clients and 2 staff is pending the outcome of the granting of this accommodation.

Staff Response to Appeal of the Reasonable Accommodation Decision

Title 20 Requirements. Requests for Reasonable Accommodation are not Land Use permits and cannot be subject to conditions such as those included in Conditional Use Permits or other discretionary land use permits. For this reason, the Zoning Ordinance requires the “consideration” of certain factors rather than the making of specific findings before the granting of a request for reasonable accommodation.

The Zoning Code specifies consideration of the eight (8) factors noted below the factual basis for a decision regarding reasonable accommodation, and to provide a basic test for “reasonableness.” These factors are to be considered on a case-by-case basis prior to the granting of a Request for Reasonable Accommodation:

1. Special needs created by the disability.
2. Potential benefit to the residents that can be accommodated by the requested modification.
3. Potential impact on surrounding uses.
4. Physical attributes of the property and structure.
5. Alternative accommodations, which may provide an equivalent level of benefit to the applicant.
6. In the case of a determination involving a single-family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents.
7. Whether the requested accommodation would impose an undue financial or administrative burden on the City.
8. Whether the requested accommodation would require a fundamental alteration in the nature of a City program.

Analysis of factors. Since the appeal letter questions the adequacy or appropriateness of “considerations” that were identified in the Director’s Final Determination of Reasonable Accommodation, this section of the report assesses the “eight consideration factors” for approval with reference to excerpts or summaries from the appeal letter that are relevant to each factor. A complete copy of the letter of appeal is also attached.

The appellant notes a statement in the Final Director’s Reasonable Accommodation Determination that, “The residence is a one-story structure ... “. Staff has identified that this statement is a “typo” that has been corrected. As shown in the facts of this report, the structure is identified as a two-story structure.

Factors 1 & 2: Special Needs and Benefits of the Accommodation

Based on the passage of Proposition 36, the voters of California have mandated the diversion of first- and second-time non-violent defendants, probationary and paroled individuals charged with simple drug possession or drug use offenses from incarceration by requiring residency into community-based substance abuse treatment programs. The District Attorney’s (DA’s) Office has indicated that such eligible individuals need to participate by residing at such facilities for periods up to about six months in order to achieve successful rehabilitation. Further, the DA’s Office has indicated the need to establish a substantial number of new facilities beyond the number that currently exists, in order to provide supervised, short-term residential environments to comply with the mandate. Coupled with

the fact that the Fair Housing Act recognizes that such individuals are determined to be “disabled”, the Director can adequately deem that appropriate consideration has been made in that special needs are created by the disability. Further, there is a benefit to the residents that would be accommodated by the granting of the accommodation by providing a housing opportunity that might otherwise not be as available or affordable. Persons recovering from substance abuse receive benefits from living together because residing together in groups is therapeutic, supportive, and the only way some people in recovery can reside in a single-family house.

Factor 3: Potential Impact on Surrounding Uses.

In this case, the Director has determined that the project is not expected to result in parking impacts. The subject property can physically accommodate two parked cars in the existing attached garage, three cars on the driveway, and two cars along the curb in front of the subject residence. The applicant has proposed to maintain the garage so that it is available for parking at all times and limit the number of licensed drivers at the facility to five, to ensure that parking does not impact adjacent uses. The applicant has indicated that because of the nature of the proposed occupancy, many of the potential residents will not be able to drive, due to either the suspension of driver’s licenses or inability to afford a private vehicle. The applicant has stated that the proposed restriction of occupancy to no more than five (5) licensed drivers is feasible and does not pose any undue hardship. It should be noted that the applicant had indicated that the garage was previously used for common area; however, granting of this request is predicated upon the applicant’s commitment to clearing the garage and ensuring that that it is available for parking use at all times.

The appellant cites concerns in the appeal letter regarding the potential for increased crime and other problems in the neighborhood as a result of the proposed increase of residents. Written comments provided by the neighbors identified a number of incidents where neighbors were made to feel uncomfortable by the residents of the facility, and the occurrence of a fire in the yard caused by a resident who had been smoking. However, as stated in the comments from the Police Department (see email dated, July 29, 2002), the police received no calls for service at the subject site from January 1, 2001, to June 30, 2002.

The Police Department provided an update regarding any new calls for service from July 1, 2002 to the present (see attached email from Police Department, dated October 2, 2003). As shown in that email, there were not any Citizen Calls for Service during the latest time period.

The District Attorney’s Office monitors certified facilities and maintains a “Group Home Hotline” for complaints at extension 1(800) 447- 1161. Staff’s initial phone conversations with the DA’s office did not indicate any issues with the operation of this facility. Staff is awaiting an updated statement from the DA’s office, and will update the Commission at the Planning Commission Hearing.

Factor 4: Physical Attributes of the Property and Structure

The Director must consider the physical attributes of the property and structure to make a determination regarding the appropriateness of a facility for the number of requested residents.

The City's Housing Codes and the Uniform Building Codes identify the maximum number of occupants a residential structure may accommodate based on square footage. Based on a review of the floor plan and room size calculations provided by the applicant, the subject house can accommodate a maximum of 12 residents. Section 17.20.270 of the San José Municipal Code and Section 503.2 of the Uniform Building Code, 1994 edition, establish as minimum square footage requirements (excluding closets) 70 square feet of sleeping area for two persons, 120 square feet of sleeping area for three persons; 170 square feet of sleeping area for four persons and an additional 50 square feet of sleeping area is required for each additional person. The subject property includes four (4) bedrooms consisting of 227-, 102-, 86-, and 136-square feet. The house provides common living area consisting of an approximately 156-square-foot living room and an approximately 222-square-foot family room.

The Housing Codes do not identify specific size requirements for the size of non-bedroom areas, but the subject house has a number of rooms for general living uses to accommodate 12 people, albeit perhaps not comfortably all at the same time in any single room. The residence also has an approximately 258-square foot kitchen/dining area. Two and ½ bathrooms in the home provide facilities for 4.8 persons per bathroom. The rear yard comprised of approximately 2,100 square feet provides adequate open space.

The City's Guidelines for Review of Requests for Reasonable Accommodation allows the City to deny a Request for Reasonable Accommodation if it is determined that the building or additions were constructed without benefit of permit. The City's Code Enforcement Division has inspected the property and has determined that there are no current code violations for the subject site.

The appellant contends that the existing house would not constitute a "spacious" environment for its residents. The relationship between the proposed number of residents and physical space of the house is not dissimilar to a large family. While the residence may not be "spacious", the above analysis concludes that the required minimum standards would be met by this proposal.

Factor 5: Alternative accommodations that may provide an equivalent level of benefit to the applicant.

The appellant has not identified an issue with regards to this consideration. However, based on the fact that the proposed request for accommodation complies with the housing codes and provides adequate parking to avoid impacts to adjacent properties, the identification of alternative accommodations to provide an equivalent level of benefit to the applicant is considered unnecessary.

Factor 6: In the case of a determination involving a single-family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents.

The appellant does not identify concern with regard to the use of the premise as an entity other than a single housekeeping unit. However, under the proposed accommodation, no physical modifications to the house are proposed in a manner that would alter its physical function as a single-family house capable of supporting a living arrangement other than a single-housekeeping unit as defined by the San Jose Municipal Code. Residents of this structure will share common facilities and living areas and household

duties. Residents living together in the number and manner proposed for this facility could be considered a single-housekeeping unit even if the residents had no disability.

Factor 7: Whether the requested accommodation would impose an undue financial or administrative burden on the City.

The appellant has not identified an issue with regards to this consideration. Staff's review of this proposal has identified no evidence that the requested accommodation would impose an undue financial or administrative burden on the City.

Factor 8: Whether the requested accommodation would require a fundamental alteration in the nature of a City program.

The requested Reasonable Accommodation for 12 total residents will not require a fundamental alteration in the nature of a City program, will not violate either the Housing or Building Codes, will not require the modification of the existing structure and will provide parking sufficient for the requested residents.

CONCLUSION

Requests for Reasonable Accommodation, such as this can result in significant neighborhood concern and controversy. Because the nature of the proposed occupancy would clearly affect a legitimately identified protected class of "disabled" individuals as defined by the Federal and State Fair Housing Acts, the City has limited ability to condition the granting of such requests in a manner that might otherwise more fully respond to the neighborhood concerns. The City cannot deny a request for Reasonable Accommodation based on the unsubstantiated concerns of a neighborhood about the potential "undesirable" nature or characteristics of prospective future occupants. The City's research has confirmed that the Housing and Building Codes are properly met through this proposal with regards to the safe, maximum occupancy of a structure. Additionally, the City may provide for reasonable safeguards to protect the surrounding residents from physical impacts such as excessive parking in the neighborhood. The appellant has not shown any evidence that would indicate that the potential impacts of the proposed Request for Reasonable Accommodation are such that it would change the existing single-family neighborhood.

COORDINATION

Preparation of this staff report was coordinated with the City Attorney's Office, Code Enforcement Division, Building Division, Police Department and the Santa Clara County District Attorney's Office.

RECOMMENDATION

Planning Staff recommends that the Planning Commission uphold the Director's Final Determination and grant the Reasonable Accommodation Request for a Sober Living Environment to operate as described in the application for up to a total of 12 residents, comprised of ten (10) residents and two (2) resident staff. Of the said residents, no more than five (5) shall be licensed drivers allowed to keep vehicles at the site.

FINDINGS

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The proposed site is located in the R-1-8 Residential Zoning District.
2. This site has a designation of Medium Low Density Residential (8 DU/AC) on the adopted San Jose 2020 General Plan Land Use/Transportation Diagram.
3. The subject site is developed with one single-family detached dwelling unit.
4. The subject site is used for residential purposes.
5. The subject site is approximately 6,200 square feet in area.
6. The persons on whose behalf the application is being heard are considered disabled under the Fair Housing Act.
7. The applicant has requested the following accommodation to a code, policy or practice of the City of San Jose: Non single-family use in an R-1-8 Residential Zone: Sober Living Environment (SLE) for (12) twelve residents, including (10) ten residents and (2) two resident staff members.
8. The residence is a two-story structure and consists of four bedrooms and two and 1/2 bathrooms. The size and the physical configuration of the residence can accommodate 12 residents.
9. A maximum of 12 residents can be accommodated in this structure in conformance with the Housing Code.
10. As represented in the floor plans submitted with the application, none of the common areas of this residence (e.g., living room, dining room, and kitchen) have been converted to bedrooms. The common areas are sufficient to accommodate a use for twelve (12) total residents.
11. As represented in the floor plans dated April 27, 2002, the facility can accommodate parking on-site for up to five (5) cars by using the garage for two (2) cars and the driveway apron for parking three (3) cars.
12. There is sufficient parking on the street adjacent to the site to accommodate parking for two (2) cars. The parking appears to be sufficient for 12 residents under the applicable guidelines, assuming that both resident managers have driver's licenses, and based on the fact that no more five (5) of the remaining residents will have a driver's license and be allowed to keep vehicles at the site.
13. The site is surrounded by single-family detached residential uses.

14. General Plan Policy specifies that residential social service programs should not be concentrated in a few areas, but should be distributed throughout the City. This area does not currently have an over-concentration of facilities of residential care homes.
15. The request is exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines.
16. The persons on whose behalf the application is being heard are considered disabled under the Fair Housing Act.
17. Appellants presented no substantiated evidence to show potential impact on surrounding uses.

The Planning Commission based on the factual findings above, concludes the following,

1. The requested accommodation will not impose an undue financial or administrative burden on the City.
2. Preservation of the single-family character of the zoning district of the subject property is a legitimate fundamental City interest.
3. The interior and exterior characteristics of the subject property, as well as the location of the property within the neighborhood and access to transportation and other services, are adequate to accommodate the alternative accommodation consistent with the single family character of the neighborhood.
4. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas.
5. The requested accommodation granted for twelve (12) total occupants will not require a fundamental alteration in the nature of a City program.

Determination of Reasonableness

The focus of this Reasonable Accommodation request is an objective analysis of the impacts associated with an increase in the total number of residents from eleven (11), including two (2) resident staff as allowed by previous Reasonable Accommodation request, to twelve (12), including two (2) resident staff.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.

2. The proposed project complies with all applicable provisions of the Zoning Ordinance
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed request complies with Guidelines for Evaluating Requests for Reasonable Accommodation.

Finally, based upon the above-stated findings, the Planning Commission concludes the following:

1. The requested Accommodation will not impose an undue financial or administrative burden on the City.
2. Preservation of the single-family character of the zoning district of the subject property is a legitimate fundamental City interest.
3. The interior and exterior characteristics of the subject property, as well as the location of the property within the neighborhood and access to transportation and other services, are adequate to provide for the requested Reasonable Accommodation consistently with the single-family character of the neighborhood.
4. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas.
5. The requested accommodation granted for twelve (12) total occupants will not require a fundamental alteration in the nature of a City program.

Cc: Reza Sadat, et al, 217 Arbor Valley Court, San Jose, CA 95119
Caroline Jay, et al, 216 Arbor Valley Court, San Jose, CA 95119
Santa Clara District Attorney, Attn: David Byers, Bureau of Investigation, 70 West Hedding Street,
West Wing, San Jose, CA 95110
Property Owners within 300 Feet (without complete attachments)